



March 27, 2003

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Federal Communications Commission
Office of Secretary

Ms. Marlene Dortch
Office of the Secretary
Federal Communications Commission
445 Twelfth Street
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Washington, D.C. 20554

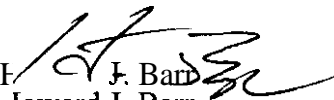
**Re: Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
MB Docket No. 02-136; RM-10458,
RM-10663, RM-10667, RM-10668**

Dear Ms. Dortch:

Transmitted herewith on behalf of Mercer Island School District and Peninsula School District No. 401 is an original and four copies of their Reply Comments with respect to the above-referenced matters.

Should any questions arise concerning this matter, please contact this office directly

Respectfully submitted,


Howard J. Barr

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION **RECEIVED**
Washington, D.C. 20554

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In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments)	
FM Broadcast Stations)	MB Docket No. 02-136
Arlington, The Dalles, Moro, Fossil,)	RM-10458
Astoria, Gladstone, Tillamook, Springfield-)	RM-10663
Eugene, Coos Bay, Manzanita and Hermiston,)	RM-10667
Oregon and Covington, Trout Lake, Shoreline,)	RM-10668
Bellingham, Forks, Hoquiam, Aberdeen, Walla)	
Walla, Kent, College Place, Long Beach, Ilwaco)	
and Trout Lake, Washington)	
To: Chief. Allocations Branch		

REPLY COMMENTS

MERCER ISLAND SCHOOL DISTRICT
PENINSULA SCHOOL DISTRICT NO. 401

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SUMMARY

Rather than support their proposed reallocation of Channel 283C3 from The Dalles, Oregon to Covington, Washington, the Joint Petitioners now propose to reallocate the channel to Kent, Washington. Counterpetitioners seek to amend the Table of Allotments by deleting the Channel 284C2 allotment at Aberdeen, Washington, reallocate channel 283C2 to Shoreline, Washington and modify the KDUX-FM license to specify operation on channel 283C2 at Shoreline.

Joint Commenters demonstrate herein that neither proposal will result in a preferential arrangement of allotments. Both merely seek to shift service from an underserved rural area to the well served Seattle area without any countervailing public interest benefits. Evaluation of both proposals under the Commission's Section 307(b) policies demonstrates that adoption of either proposal will be in contravention of those policies.

Furthermore, Joint Petitioners' amended proposal is fraught with procedural infirmities such that the Commission should treat it as a new proposal and either dismiss it or conduct a notice and comment rule making proceeding.

Both proposals will result in the loss of valuable services at Mercer Island and Gig Harbor, Washington. The Commission should adopt Joint Commenters proposal that it grant/establish an allotment for KMIH(FM) at Mercer Island, Washington. MISD reiterates that it will apply for the channel and construct the facility as authorized.

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Walla, Kent, College Place, Long Beach, Ilwaco)	
and Trout Lake, Washington)	

To: Chief, Allocations Branch

REPLY COMMENTS

Mercer Island School District (“MISD”) and Peninsula School District No. 401 (“Peninsula”) (collectively “Joint Commenters”), by their counsel, hereby submit their Reply Comments in response to the Commission’s Public Notice, Report No. 2599, released March 10, 2003.¹ The following is shown in support thereof:

1. BACKGROUND.

Mid-Columbia Broadcasting, Inc. (“Mid-Columbia”), licensee of station KMCQ(FM), channel 283C (104.5), The Dalles, Oregon, and Joint Petitioners Company, L.P. (“Joint Petitioners”), filed a Petition for Rule Making on October 29, 2001, (“Original Proposal”)

¹ Joint Commenters respectfully request acceptance of its late-filed (by two days) Reply Comments. Joint Commenters previously submitted Comments and Reply Comments in this docket. These Reply Comments largely reiterate points previously made and do not specifically address any submissions in response to the March 10 Public Notice thus no party will be prejudiced by the acceptance of these Reply Comments.

proposing the downgrade of Station KMCQ, Channel 283C, The Dalles, Oregon, to Channel 283C3 and its reallocation to Covington, Washington. Joint Petitioners also proposed the allotment of Channel 283C1 at Moro, Oregon; Channel 261C2 at Arlington, Oregon and Channel 226A at Trout Lake, Washington so as to “provide service to unserved and underserved areas resulting from the proposed KMCQ relocation. The Commission’s *Notice of Proposed Rule Making*, DA 02-1339, released June 7, 2002 (“*NPRM*”), elicited the following:

- o Joint Petitioners abandoned its Original Proposal and presented its amended proposal pursuant to which KMCQ will be downgraded from Channel 283C3 to Channel 283C2 and reallocated to Kent, Washington rather than Covington. To accommodate the Amended Proposal, KAFE (FM), Bellingham, Washington, would change frequency from Channel 282C to Channel 281C and KLLM (FM), Forks, Washington, would change from Channel 280A to Channel 288A. Joint Petitioners also requests that the Commission ask Canada to change the channel of one vacant Canadian allotment and to waive a short-spacing situation with respect to another so as to permit KAFE to operate on Channel 281C without reducing power in the direction of those allotments? In lieu of that accommodation Joint Petitioners, along with the KAFE licensee Saga Broadcasting Corp. (“Saga”), the KAFE licensee, proposes that KAFE can and will protect the Canadian allotments by operating with a directional antenna.
- o Joint Commenters filed comments opposing Joint Petitioners’ Original Proposal and counterproposing that the Commission should instead adopt a special allocation granting KMIH(FM), Mercer Island, Washington the equivalent of Class A status and protection in accordance with the Class A minimum distance separations on channel 283 at Mercer Island, Washington³
- o Triple Bogey, LLC, MCC Radio, LLC and KDUX Acquisition, LLC (“Counterpetitioners”) counterproposed that KDUX-FM change from Channel 284C2 to Channel 283C2 and be reallocated from Aberdeen, Washington to Shoreline, Washington. It also requests that the frequency

² Specifically, KAFE would be short-spaced to Channel 280A at Powell River, British Columbia, and Channel 281 A at Bralorne, British Columbia.

³ Mercer Island herein reiterates its commitment to apply for the allotments requested in its Counterproposal and promptly construct the facilities for which they receive construction permits. Joint Commenters counterproposal is not listed in the FCC’s March 10, 2003 Public Notice.

of KLLM be changed from Channel 280A to Channel 240A and, like Joint Petitioners, requests that KAFE be changed from Channel 282C to Channel 281C; both without a change in transmitter site!

- o New Northwest Broadcasters, LLC (“New Northwest”) seeks to relocate Station **KAST-FM**, Astoria, Oregon, to Gladstone, Oregon along with the substitution of Channel **226C3** at Gladstone for Channel **225C1** at Astoria and the modification of several existing stations and new allotments. The New Northwest proposal does not affect the operations of and is not further addressed herein.
- o Two Hearts Communications, LLC (“Two Hearts”) licensee of Station **KHSS**, Channel **264C3**, Walla Walla, Washington, seeks modification of KHSS to operate on Channel **264C2** at College Place, Washington. Likewise, Joint Commenters to not further address the counterproposal of Two Hearts.’

At the outset, Joint Commenters incorporates by reference herein its two pleadings filed to date in the above-captioned docket, copies of which are on file with the Commission and of which the Commission may take official notice.

II. JOINT PETITIONERS’ COUNTERPROPOSAL SHOULD BE REJECTED AB NZIZO

Joint Commenters maintain their position that the Commission’s *Toccoa Policy*⁶ requires the dismissal of Joint Petitioners’ counterproposal to its own proposal. Joint Petitioners failed to provide any valid justification for its counterproposal. Its inability to enter into its arrangement with Saga prior to issuance of the original NPRM fails to satisfy the *Toccoa Policy*. The submission was a blatant attempt to manipulate the Commission’s rulemaking procedures and to

⁴ Triple Bogey’s Counterproposal also seeks that Channel **284C2** be substituted **For** Channel **237C3** at Hoquiam, Washington and that the license of **MCC’s** Station **KXXX** be modified to specify operation on that channel. It also proposes five new vacant allotments: Channel **237C3** at Aberdeen, Washington; Channel **226A** at Trout **Lake**, Washington; Channel **261C2** at Arlington, Oregon; Channel **300A** at Moro, Oregon and Channel **285A** at Fossil, **Oregon**.

⁵ Two Hearts’ counterproposal is not listed in the FCC’s March **10,2003** Public Notice.

⁶ *Toccou, Georgia*, 16 FCC Rcd 21 191 (Chief, Allocations Branch 2001).

circumvent the notice and comment requirements of the Administrative Procedure Act and should be rejected.’

Moreover, the Commission should take the opportunity to do here what it did not in *Taccoa, Sugar Hill, and Lawrenceville, Georgia*, 16FCC Rcd 21 191 (Allocations Branch 2001), i.e., establish a policy prohibiting rulemaking proponents from counterproposing their own proposals. Aside from the APA issues that arise, permitting rulemaking proponents to do so works an unnecessary hardship on the Commission and its staff and imposes an intolerable burden and works an intolerable unfairness on other parties.

For example, by submission of their proposal Joint Petitioners forced the Commission’s staff to expend scarce time, energy and resources considering an allotment that Joint Petitioners never had any intention of pursuing. Likewise, Joint Petitioners forced Joint Commenters to expend time, energy and, most importantly, scarce funds to mount an opposition to a proposal Joint Petitioners never had any intention of pursuing. Not only should the Commission establish a policy prohibiting petitioners from counterproposing themselves, but it should require Joint Petitioners to reimburse Joint Commenters for all fees and expenses incurred in connection with this proceeding.

III. THE PROPOSED REALLOTMENTS FAIL TO ACHIEVE A FAIR, EFFICIENT AND EQUITABLE DISTRIBUTION OF RADIO SERVICE

As Joint Commenters addressed in their Comments, the Commission’s paramount responsibility in its implementation of Section 307(B) of the Communications Act is to achieve a “fair, efficient and equitable distribution of radio service ...” *National Association of Broadcasters v. FCC*, 740 F.2d 1190 (D.C. Cir. 1984). “The ultimate touchstone for the FCC is

⁷ Section 553 of the Administrative Procedure Act (APA), 5 USC §553

... the distribution of service, rather than of licenses or stations; the constituency to be served is people, not municipalities.” *Id.* Even assuming that the Commission should find an unforeseen circumstance sufficient to warrant consideration of Joint Petitioners’ counterproposal, review of the proposal consistent with the Commission’s Section 307(b) policies demonstrates that it fails to result in a “fair, efficient and equitable distribution of radio service ...” *Id.* The proposal fails to result in a preferential arrangement of allotments and should be denied.

Again, “the constituency to be served is people, not municipalities.” *Id.* But though Joint Petitioners, propose to serve the community of Kent,’ their proposal evidences no present (or future) intention to serve the **people** of Kent. Likewise, Counterpetitioners’ proposal evidences no intention to serve the **people** of Shoreline, Washington. “[T]he constituency to be served is people, not municipalities.” *Id.* The communities of Kent and Shoreline are merely means to an end: Seattle. The Commission should refuse to cast a blind eye to this reality.

Nowhere in their proposals, for example, do Joint Petitioners or Counterpetitioners indicate that they will provide coverage of Kent or Shoreline high school athletics; a public service offered by both KMIH(FM), Mercer Island, Washington and K283AH at Gig Harbor. These, and the other valuable services locally produced and presented by the broadcasters at KMIH(FM) and KGHP(FM) in service to the people of their local communities will be lost forever should Joint Petitioners proposal be adopted. A preferential arrangement of allotments cannot be the result when long standing local community broadcasters are displaced by large

⁸ Much like they earlier proposed to serve the community of Covington.

⁹ Counterpetitioners, consisting of Triple Bogey, LLC, MCC Radio, LLC and KDUX Acquisition, LLC, propose, among other things, the re-location of KDUX-FM) from Aberdeen, Washington to Shoreline, Washington and a change in channel from 284C2 to 283C2.

regional broadcasters proposing only to add one more in the cacophony of voices to a well served metropolitan area.

The people of Kent (as were/are the people of Covington) and the people of Shoreline, by virtue of their location within the Seattle Urbanized Area (and despite the fact that no station is presently specifically allotted to either community), are already exceedingly well served. Radio-Locator.com reveals forty three (43) stations, twenty two (22) of which are FM stations, within close listening range of both Kent and Shoreline. Attachment A. An added voice, despite the nominal affiliation with Kent or Shoreline, will not result in a preferential arrangement of allotments.

The Commission itself has recognized that the grant of a dispositive preference, such as that sought here, to an applicant proposing a first local service near a metropolitan area has the potential to produce “anomalous results” that can contravene section 307(b)’s statutory mandate. *Faye & Richard Tuck*, 3 FCC Rcd 5374 (1988).¹⁰ To avoid such results, the Commission specifically stated that it will not apply the first local service preference of its allotment criteria blindly so as to avoid allowing an “artificial or purely technical manipulation of the Commission’s 307(b) related policies” when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area. *Amendment of the Commission’s Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7096 (1990).

¹⁰ The FM allotment criteria are as follows: (1) first aural service; (2) second aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982).

Whether Kent, Covington or Shoreline is the named community of license, the proposals boil down to little more than an “artificial [and] purely technical manipulation of the Commission’s Section 307(b) policies.” *Id.* In each case, longstanding service will be shifted from an underserved rural area to an exceedingly well served urban area without any countervailing public interest benefits. On top of that, adoption of either (or any) of the proposals will result in the loss of longstanding first local services at Gig Harbor and Mercer Island.

Application of the *Tuck* criteria consistent with the mandates of Section 307(b) demonstrates that, for these purposes, the suburban Seattle communities of Kent (and Covington) and Shoreline are not independent of, but rather interdependent with, Seattle and the Seattle Urbanized area and that neither is deserving of a first local service preference. *See New Radio Corp.*, 804 F.2d 756,762 (D.C. Cir. 1986) (a city can be “a cognizable community with local needs and interests” while also being “so integrally related to neighboring communities as to be part of a single larger community for Section 307(b) purposes).” *See also Arizona Number One Radio, Inc.*, 2 FCC Rcd 44 (1987), *affd mem. Sub nom. Interstate Broadcasting System v. FCC*, 836 F.2d 1408, (D.C. Cir. 1988).

Furthermore, the proposed reallocation of Channel 283C is mutually exclusive with the existing operations of KMIH(FM), Mercer Island, Washington on co-channel 283, licensed to MISD, and FM translator K283AH, Gig Harbor, licensed to Peninsula. The stations serve as valuable training grounds for students of the school districts and are a significant asset to their communities. The public interest will most definitively fail to be served in the event Channel 283C is reallocated to Seattle at the expense of KMIH(FM) and K283AH.

Joint Petitioners’ proposal is now even more analogous to the situation in Richmond” than when Covington was proposed as the community of license. Counterpetitioners’ proposal is similarly analogous. As discussed in the Joint Commenters original comments, the city of Richmond (population 74,676 was located 16 miles northeast of San Francisco across the San Francisco Bay), though within the San Francisco-Oakland Urbanized area. *KFRC*, 5 FCC Rcd 3222. Notwithstanding the existence of a number of factors showing Richmond to be an independent community in and unto itself,” the Commission found that grant of a Section 307(b) preference would produce an anomalous result. *Id* at 3223.

Because of the size disparity between Richmond and San Francisco and the proximity between the two, the Commission found that the first two of the *Tuck* standards “strongly favor[ed] applying *Huntington* and not giving a Section 307(b) preference to the Richmond applicants.” *Id*. The same situation exists here. Each of Kent and Shoreline are proximate to and significantly smaller than the central city of Seattle. The evidence, as it did in *KFRC*, also demonstrates that neither is independent of the central city of Seattle.

A fair, efficient and equitable distribution of radio service, rather than the distribution of licenses to particular communities warrants denial of the Joint Petitioners’ and the Counterpetitioners’ respective proposals. *See NAB v. FCC*, 740 F.2d at 1190. The Commission

¹¹ *See RKO General, Inc.* (“*KFRC*”), 5 FCC Rcd 3222 (1990).

¹² Richmond was an incorporated city with its own city council-city manager government that provided a number of municipal services; was part of the Richmond Unified School District and had a budget in excess of \$17 million in 1984-85. Additionally, 31% of Richmond’s 28,739 person workforce worked in San Francisco while only 2% worked in San Francisco. Richmond also had a weekly shopper newspaper, and a number of cultural and recreational facilities, churches, medical facilities, civic and other organizations. Richmond telephone numbers were listed in a separate directory and calls to San Francisco and Oakland were toll calls. *KFCR*, 5 FCC Rcd at 3222-23. *See also* 4 FCC Rcd 4997, 4999 Rev. Bd. 1989).

must not only review these reallocation proposals pursuant to its **Tuck** criteria, but it must do so in a manner consistent with Section 307(b), **Huntington** and **KFRC**.

IV. JOINT PETITIONERS HAVE FAILED TO DEMONSTRATE THAT KENT IS INDEPENDENT OF THE SEATTLE URBANIZED AREA

The following criteria demonstrate that Kent is not independent of the Seattle Urbanized Area. **Tuck**, 3 FCC Rcd at 5377-78.

A. Signal Population Coverage

As Joint Petitioners concede, operating from Kent, KMCQ(FM) will place a 70 dBu contour over 79% of the Seattle Urbanized Area. Thus, the station will serve the vast majority of the Seattle Urbanized Area. In this case, Joint Petitioners fail even worse than when they proposed to relocate KMCQ(FM) to Covington. The Commission should make no mistake about it; Joint Petitioners can call it what they like but this is a Seattle radio station.

B. Size and Proximity to the Central City

Kent has a 2000 Census population of 79,524 (approximately the same size as Richmond) whereas Seattle has a 2000 Census population of 563,374 making Kent 14% or 7/50ths the size of Seattle. The Seattle Urbanized Area has a 2000 Census population of 2,712,205, making Kent .029 percent – or 29/100000ths -- the size of the Urbanized Area. As discussed previously, Richmond was just 1/9th – or 11% -- the size of San Francisco **KFRC**, 5 FCC Rcd 3223. As Joint Petitioners note, Kent is located just 26 kilometers – or 16 miles from Seattle; the same distance separating Richmond and San Francisco. **KFRC**, 5 FCC Rcd 3223. Comparatively, Kent is to Seattle what Richmond was to San Francisco; except that in this case the two are not separated by a body of water. Given the distinct similarities between Kent and

Richmond, consistent with its own precedent, the Commission should decline to award Kent the first local preference priority sought by Joint Petitioners.

C. Kent is Interdependent with Seattle

As for the third of the *Tuck* criteria and its eight factors, the evidence demonstrates that Kent is interdependent with the Seattle Urbanized Area.

1. Extent to Which Residents of Kent Work in the Town of Kent

The Joint Petitioners seek to avoid their burden to establish that a majority of Kent residents work within that community. *See Pleasanton, Bandera and Schertz, Texas*, 515 FCC Rcd 3068,3071 (Allocations Branch 2000) (“*Schertz*”). Merely showing that employment opportunities exist within a community, as Joint Petitioners seek to do, “is not sufficient to establish that a majority of residents live and work in the community, as we have generally required.” *Id.*

Perhaps most telling are the Census Bureau’s statistics indicating that the mean travel time to work for Kent residents is 28.9 minutes. See Attachment B. This lengthy commute places Kent residents within a radius encompassing virtually the entire Seattle Urbanized Area. Joint Petitioners themselves concede that the most recent statistics demonstrate that **72.5%** of Kent’s residents work outside of Kent.

The evidence demonstrates that a majority of the Kent’s workforce are employed outside of Kent and elsewhere within the Seattle Urbanized Area. Accordingly, the evidence under factor 1 strongly suggests that Kent is interdependent with the larger Seattle Urbanized Area.

2. Newspapers and Other Media

First, the South County Journal (“SCJ”) is a Covington newspaper and now it’s a Kent newspaper. This is a classic example of trying to have your cake and eat it too.

Just as the SCJ was not a local Covington paper, nor is the SCJ a local Kent paper. As demonstrated in Joint Commenters Comments in this proceeding, Kent is only one of a number of communities receiving service from the SCJ.¹³ The Seattle Times and the Seattle Post-Intelligencer is the predominant paper in the region dwarfing SCJ readership. *See* Attachment C.

Moreover, it has recently been reported that the SCJ and its sister publication the Eastside Journal will merge later this year to form one large paper known as the King County Journal. Attachment D hereto. The primary markets for this new paper will be the suburbs of Bellevue, Redmond and Renton. *Id.* No mention of added service to Kent.¹⁴

Additionally, as was the case with Covington, the fact that Kent has its own website is insignificant. As does Covington’s, Kent’s website follows the standard of all cities in Washington that run their own websites and is indicative of nothing other than the fact that Kent is a city. Many other small communities in the general vicinity that are likewise interdependent with the Seattle Urbanized area – such as Mercer Island (www.ci.mercer-island.wa.us), Maple Valley (www.ci.maple-valley.wa.us) and Kent (www.ci.kent.wa.us) run their own websites.

¹³ According to information provided by that paper, however, the paper is distributed not only to residents of Covington, but to residents in the surrounding areas of Renton (zip codes 98056, 98059, 98055 and 98058), Kent (zip codes 98032, 98031 and 98042) and Auburn (98001, 98002 and 98092).

¹⁴ As discussed in Joint Commenters Comments, in addition to the South County Journal, the Seattle Urbanized Area is served by not just one, but two daily newspapers: the Seattle Times and the Seattle Post-Intelligencer, both of which have South King County bureaus (as does the Morning News Tribune of nearby Tacoma).

3. Community Perception

Again, Joint Petitioners did not provide even a single statement from a Kent community leader on the issue of whether they perceive Kent to be separate from the larger Seattle Urbanized Area. Instead, Joint Petitioners merely provide a brief Kent history lesson. This falls far short of establishing that Covington's leadership perceive the community to be separate from, and independent of, the Seattle Urbanized Area.

Furthermore, while Kent may be situated in the Green River Valley, geographically, Kent and the rest of the Seattle area (and its other suburbs) are completely contiguous. Unlike Richmond (which was found to be interdependent with) and San Francisco, Kent and Seattle are not separated by any geographical boundary.

4-5. Whether the Specified Community has its Own Local Government and Elected Officials/Own Telephone Book Provided by the Local Telephone Company or Zip Code

Kent does have its own local government and elected officials.¹⁵

As was the case with the SCJ, Joint Petitioners once again seek to have their cake and eat it too. First, when it served their purposes to do so, they contended that zip code 98042 belonged to Covington. Now suddenly, 98042 is a Kent zip code. As is the case with the SCJ, Joint Petitioners do not even attempt to explain this.

Joint Petitioners seek to skew the issue by asserting that Kent has separate listings in the local telephone book. The question, however, is not whether Kent is listed in the phone book,

¹⁵ It does not, however, have its own King County Council representative. Rather, Kent is lumped together with Auburn, Burien, Des Moines, Normandy **Park**, SeaTac and Tukwila. Nor does Kent form its own state legislative district.

but whether Kent has its own local telephone book. The simple answer is no – Kent does not have its own local telephone booth..

By way of comparison, Gig Harbor, KGHP(FM)’s community of license has its own phone book and **the** Gig Harbor Post Office has three zip codes – 98335, 98329 and 98332 – assigned to it. Likewise, Mercer Island has its own zip code – 98040.

6. Whether the Community Has its Own Commercial Establishments, Health Facilities, and Transportation Systems

Likewise, the minimal information provided here is insufficient to demonstrate that Kent is independent of the Seattle Urbanized Area. The existence of a variety of small businesses located within Kent’s city limits is diminished by the fact that the vast majority of Kent’s residents work outside of Kent.

Additionally, Kent does not have its own public transportation system. Like those residing in other Seattle/King County suburbs, residents of Kent are dependant upon King County Metro for public transportation. They are likewise dependant upon the Seattle Urbanized Area for longer distant travel as train, bus and air terminals are all located elsewhere in the Urbanized Area.

Finally, while certain specialist medical services may be available in Kent, Kent does not have a central medical facility. One would ordinarily anticipate that a truly independent community, particularly one **the** size of Kent, would provide such services. **The** lack of such a facility, given the extent of such facilities in neighboring Seattle, is particularly telling.

7. Extent to Which **the** Specified Community and the Central City are Part **of** the Same Advertising Market

As before, Joint Petitioners claim that “residents of Kent do not need to travel to Seattle or seek out other media sources in order to find out what is happening in their community.”

Again, however, they fail to explain what relevance this has to the inquiry. To the extent it has any relevance, it demonstrates that the advertisements come to them in Seattle Publications, i.e., the Seattle Times and Seattle Post-Intelligencer, and by way of the other numerous Seattle media outlets.

The question is a simple one. Are Kent and Seattle part of the same advertising market? The answer is also a simple one: Yes. The fact that Kent businesses advertise in the soon to be eliminated SCJ proves nothing and does not a Kent advertising market make.

The “Kent ad buy is as nonexistent as the “Covington ad buy.” Kent and Seattle are **part** of the same advertising market. Kent is located within both the Seattle Arbitron Metro and the Seattle DMA; establishing that the two are part of the same advertising market. *See Detroit Lakes and Barnesville, Minnesota, and Enderlin, North Dakota*, 16 FCC Rcd 22581 (2001).

Furthermore, Kent is located within the Seattle Basic Trading Area.¹⁶ BTAs are based on Rand McNally's Commercial Atlas & Marketing Guide. BTA boundaries follow county lines and include the county or counties whose residents make the bulk of their purchases in that area. BTAs are geographic boundaries that segment the United States for licensing purposes. For example, the FCC uses BTAs to license a number of services. Thus, for a number **of** licensing purposes, the Commission considers Shoreline to be interdependent with Seattle. The same conclusion should be reached here

¹⁶ The Seattle BTA is one of forty seven Major Trading Areas.

8. The Extent to Which the Specified Community Relies on the Larger Metropolitan Area for Various Municipal services such as Police, Fire Protection, Schools, and Libraries.

With the exception of library services, Kent provides its own services in these areas. For its library services, Kent is dependant upon King County.

V. COUNTERPETITIONERS HAVE FAILED TO DEMONSTRATE THAT SHORELINE IS INDEPENDENT OF THE SEATTLE URBANIZED AREA

Counterpetitioners counterpropose that KDUX-FM be re-located approximately 120 miles from Aberdeen, Washington to Shoreline, Washington as that community's first local service, necessitating a change in channel from Channel 284C2 to Channel 283C2.¹⁷

Given Shoreline's location within the Seattle Urbanized Area, it too must pass a **Tuck** analysis. A review of its proposal consistent with the Section 307(b) principles as discussed herein (and in Joint Commenters original comments in this proceeding) warrant denial of this proposal as well.

A. Signal Population Coverage

As Joint Petitioners concede, operating from Shoreline, KDUX(FM) will place a 70 dBu contour over 23.4% of the Seattle Urbanized Area **and 100% of** the Bremerton Urbanized Area. Thus, the station will serve a significant portion of one Urbanized Area and will completely serve another.

¹⁷ Given that this proposal will have the same effect upon the operations of translator station **K283AH**, Gig Harbor, Washington and **KMIH(FM)**, Mercer **Island**, Washington, for the reasons set forth herein and in Joint Commenters original comments – all of which are incorporated by reference herein -- adoption of this proposal will fail to serve the public interest.

B. Size and Proximity to the Central City

Counterpetitioners concede that Shoreline is significantly smaller than the central city of Seattle. At 8.9% of the population of Seattle (and .019% of the population of the Seattle Urbanized Area), by comparison, Shoreline does not fare even as well as Kent on this score. As Counterpetitioners note, Shoreline is located just 16 kilometers – or 9.9 miles from Seattle; less than the distance separating Richmond and San Francisco. *KFRC*, 5 FCC Rcd 3223. The substantial disparity in size between Shoreline and Seattle and Shoreline and the Seattle Urbanized Area, along with the proximity between the two, strongly suggests that Shoreline is interdependent with the much larger central city of Seattle. *See KFRC*, 5 FCC Rcd at 3223.

C. Shoreline is Interdependent with Seattle

As for the third of the *Tuck* criteria and its eight factors, the evidence demonstrates that Shoreline is interdependent with the Seattle Urbanized Area.

1. Extent to Which Residents of Shoreline Work in the Town of Shoreline

Counterpetitioners, as do Joint Petitioners, seek to avoid their burden to establish that a majority of Covington residents work within that community. *See Pleasanton, Bandera and Schertz, Texas*, 515 FCC Rcd 3068, 3071 (Allocations Branch 2000) (“*Schertz*”). Merely showing that employment opportunities exist within a community, as Counterpetitioners seek to do, “is not sufficient to establish that a majority of residents live and work in the community, as we have generally required.” *Id.*

According to the 2000 US Census, the mean travel time to work for a Shoreline resident was 26.9 minutes. The length of the mean commute for Shoreline’s 26,276 workers suggests that a majority of the Shoreline workforce are employed outside of Shoreline and elsewhere within

the Seattle Urbanized Area. Accordingly, the evidence under factor 1 strongly suggests that Shoreline is interdependent with the larger Seattle Urbanized Area.

2. Newspapers and Other Media

Unlike Joint Petitioners, Counterpetitioners concede that Shoreline does not have a daily newspaper. Given Shoreline's size, the Commission should discount the existence of the weekly Shoreline Enterprise. *See KFRC*, 5 FCC Rcd 3222 at Para. 17 (the Commission finding it "significant" that Richmond did not have its own daily newspaper, particularly because the San Francisco daily newspaper had such wide distribution throughout the Bay area).

3. Community Perception

Counterpetitioners did not provide even a single statement from a Shoreline community leader on the issue of whether they perceive Shoreline to be separate from the larger Seattle Urbanized Area. Instead, Counterpetitioners merely provide a few feel good statements about Shoreline. This falls far short of establishing that Covington's leadership perceives the community to be separate from, and independent of, the Seattle Urbanized Area.

Shoreline's own website demonstrates Shoreline's interdependence with Seattle:

The City of Shoreline offers classic Puget Sound beauty and the convenience of suburban living with the attractions of nearby urban opportunities.

Before becoming a city in 1995, the City of Shoreline was an island of unincorporated King County surrounded by the older cities of Seattle, Edmonds, Woodway and Lake Forest Park ... It is primarily residential with more than 70 percent of the households being single-family residences.

The foregoing demonstrates that Shoreline's community leaders do not perceive Shoreline to be independent of Seattle.

4-5. Whether the Specified Community has its Own Local Government and Elected Officials/Own Telephone Book Provided by the Local Telephone Company or Zip Code

Shoreline does have its own local government and elected officials.

Shoreline does not have its own phone book.

Shoreline does not have its own zip code. Each of the three zip codes it relies upon are Seattle zip codes. Use of “Shoreline” in lieu of “Seattle” is merely “acceptable. Indeed, Shoreline’s own pamphlet “Currents” is mailed with a “Seattle” postmark.

6. Whether the Community Has its Own Commercial Establishments, Health Facilities, and Transportation Systems

Likewise, the minimal information provided here is insufficient to demonstrate that Shoreline is independent of the Seattle Urbanized Area. While Shoreline may have a variety of small businesses located within its city limits, by Counterpetitioners own admission, the vast majority of the private sector office space in Shoreline is “functionally obsolete.” Shoreline does not have its own public transportation system. Like those residing in other Seattle/King County suburbs, residents of Shoreline are dependant upon King County Metro for public transportation. They are likewise dependant upon the Seattle Urbanized Area for longer distant travel as train, bus and air terminals are all located elsewhere in the Urbanized Area.

Furthermore, while certain specialist medical services may be available in Shoreline, Shoreline does not have its own central medical facility. **As** with Kent, one would ordinarily anticipate that a truly independent community, particularly one the size **of** Shoreline, would

¹⁸ See Counterpetitionen Exhibit F at P. III.

provide such services. The lack of such a facility, given the extent of such facilities in neighboring Seattle, is particularly telling.

7. Extent to Which the Specified Community and the Central City are Part of the Same Advertising Market

The question is not whether businesses can advertise to Shoreline residents, but whether Shoreline and Seattle are part of the same advertising market. The question is a simple one, as is the answer: Yes.

The fact that one can advertise in the Shoreline Weekly does not a Shoreline advertising market make. Shoreline and Seattle are part of the same advertising market. Shoreline is located within both the Seattle Arbitron Metro and the Seattle DMA; establishing that the two are part of the same advertising market. *See Detroit Lakes and Barnesville, Minnesota, and Enderlin, North Dakota*, 16 FCC Rcd 22581 (2001).

Furthermore, Shoreline is located within the Seattle Basic Trading Area.” BTAs are based on Rand McNally’s Commercial Atlas & Marketing Guide. BTA boundaries follow county lines and include the county or counties whose residents make the bulk of their purchases in that area. BTAs are geographic boundaries that segment the United States for licensing purposes. For example, the FCC uses BTAs to license a number of services. **Thus**, for a number of licensing purposes, the Commission considers Kent to be interdependent with Seattle. The same conclusion should be reached here.

¹⁹ The Seattle BTA is one of forty seven Major Trading Areas.

8. The Extent to Which the Specified Community Relies on the Larger Metropolitan Area for Various Municipal services such as Police, Fire Protection, Schools, and Libraries.

While Shoreline does have a small police force, as Counterpetitioners admit, the service is provided pursuant to a contract with the King County Sheriff's Department. Shoreline has no municipal library of its own. Its library services are provided by King County.

VI. THE PROPOSED REALLOTMENTS WOULD NOT RESULT IN A PREFERENTIAL ARRANGEMENT OF ALLOTMENTS

The Commission will consider a community as independent only when a majority of the Tuck factors demonstrate that the community is distinct from the urbanized area. *See, e.g., Parker and St. Joe, Florida*, 11 FCC Rcd 1095 (1996). The foregoing demonstrates that the majority of the factors weigh in favor of finding both Kent and Shoreline to be interdependent with Seattle and the Seattle Urbanized Area. Neither community is deserving of a first local service preference within the context of this proceeding. Rather, each should be treated as proposing "simply an additional allotment to the urban area. *KFRC*, 5 FCC Rcd at 7097. Accordingly, the Commission should not award a first local preference to either Joint Petitioners or Counterpetitioners, but rather attribute all of the services of the Seattle Urbanized Area to Kent/Shoreline and consider the reallocation proposals pursuant to FM allotment priority four, "other public interest matters."²⁰

Both Joint Petitioners and Counterpetitioners are motivated solely by the desire to depart their rural community for the attraction of the much larger Seattle Urbanized Area. Any other finding would be to "condone an artificial and unwarranted manipulation of the Commission's policies." *KFRC*, 5 FCC Rcd at 7097. The proposals seek merely to add one more voice to an

²⁰ *Greenfield and Del Rey Oaks, California*, 11 FCC Rcd 12681, 12684 (Allocations Branch 1996)

already well served marketplace at the expense of the people resident in the underserved communities of The Dalles and Aberdeen. The illusory net increase in coverage aside, no public interest benefit will be derived from adoption of either proposal.

As discussed in Joint Commenters Comments, the Commission must weigh the “legitimate expectation [of the residents of Aberdeen and The Dalles] that existing service will continue ... against the service benefits that may result from reallocating a channel from one community to another. Neither Joint Petitioners nor Counterpetitioners have identified any public interest factors sufficient to offset the legitimate expectation of continued service.

Furthermore, as an additional public interest factor, the Commission should consider the loss of service that will result from the loss of KMIH(FM) and KGHP(FM)’s translator K283AH should Joint Petitioners’ or Counterpetitioners’ proposal be adopted. Finally, as described in Joint Commenters Comments, in lieu of either of the proposals, the Commission should grant/establish an allotment for KMIH(FM) at Mercer Island, Washington. MISD reiterates that it will apply for the channel and construct the facility as authorized.

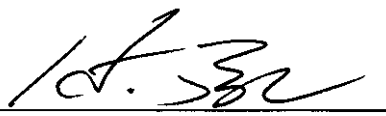
Adoption of this counterproposal will result in a preferential arrangement of allotments since it will serve to preserve the longstanding service KMIH(FM) has provided to the citizens of Mercer Island. By adopting this counterproposal – rather than any of the other proposals before it -- the Commission will fulfill the paramount responsibility in its implementation of Section 307(b).

CONCLUSION

Application of the *Tuck* criteria in a manner consistent with Section 307(b), *Huntington* and *KFRC* demonstrates that Kent (and Covington) and Shoreline are interdependent with the vastly larger central city of Seattle and the Seattle Urbanized Area and that the proposed reallocations are not entitled to a first local service preference. Rather, the proposals should be examined under the Commission's fourth allotment priority. Analysis of the proposals under that priority requires a finding that neither will result in a preferential arrangement of allotments. Finally, the Commission should adopt the proposed allocation at Mercer Island as proposed in Joint Commenters original comments in this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Dina Etemadi, do hereby certify that I have on this 27th day of March, 2003, caused to be hand delivered or mailed via First Class Mail, postage prepaid, copies of the foregoing Further Reply Comments to the following:

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